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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 77/2014*,**

Communication submitted by:	A.M. (represented by counsel, Daniel Nørrung)
Alleged victim:	The author
State party:	Denmark
Date of communication:	21 February 2014 (initial submission)
References:	Transmitted to the State party on 7 November 2014 (not issued in document form)
Date of adoption of views:	21 July 2017

* Adopted by the Committee at its sixty-seventh session (3-21 July 2017).

** The following members of the Committee took part in the consideration of the present communication: Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Naéla Gabr, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Bandana Rana, Patricia Schulz, Wenyan Song and Aicha Vall Verges.

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1.1 The author of the communication is A.M., a Somali national born in 1977. The author claims that her deportation back to Somalia would constitute a violation of the State party's obligations under articles 1, 2, 3, 5 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for the State party in 1983 and 2000, respectively. The author is represented by counsel, Daniel Nørrung.

1.2 The author's application for asylum was rejected by the Danish Immigration Service on 29 November 2013. The Refugee Appeals Board dismissed the appeal against that decision on 6 February 2014. The author did not immediately request interim measures in her initial communication, but did so on 5 November 2014. On 7 November 2014, the Committee, acting through its Working Group on Communications, requested that the State party refrain from returning the author to Somalia pending the consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure.

Facts as submitted by the author

2.1 The author was born in Mogadishu in 1977. She lived in northern and central Somalia for around three years during her infancy. Her mother's clan is originally from northern Somalia, but no relatives remain there, and her mother was born and brought up in the south. Her father worked all over Somalia, including in the north, before the civil war began in 1991. He was killed on the journey to Kismaayo to escape the war. At that time, the author moved to Kismaayo, where she lived for most of her life before she left Somalia. She was married three times.

2.2 The author's first husband, M.I.A., was very violent during the four months that they lived together with his family in Mogadishu in 2000. The author subsequently escaped back to her own family in Kismaayo. The author submits that she sustained a number of injuries during her marriage to M.I.A.: she was struck several times on the head with metal objects and required a total of 11 stitches to her head; she has scars from knife wounds around her right ear; she has scars from burns on her right hand, which were caused by M.I.A. pouring hot sauce on her hand; her finger was broken from being beaten with a wooden stick; she lost teeth from being headbutted; she has several scars from cigarette burns on her left shoulder; she has scars from stab wounds on her chest; and she has a scar under her breast. M.I.A. did not agree to their separation or divorce. However, his father, who was friends with the author's father, allowed the divorce after one year of marriage. Although the divorce was officially decreed, M.I.A. did not accept it. The author has not seen M.I.A since she left the marital home. After that time, he became a member of Al-Shabaab, of which he is now a leader.

2.3 The author's second husband, F., whom the author married in Kismaayo in 2001, was killed in 2010. Al-Shabaab members broke into the marital home and shot both him and the author. As a result of the attack, the author has scars on her left foot and ankle, her left hand was broken with a rifle and she has back pain as a result of falling on to building materials on the ground after she was shot. Following the attack, the author moved in with a friend of her mother and was informed that members of Al-Shabaab had come to her house several times looking for her. This incident was the reason that the author fled the country through Kenya to Uganda. The author believes that M.I.A. is responsible for the murder of her second husband.

2.4 While in Uganda, the author met her third husband, A., who was originally from Kismaayo and related to the author's mother. Upon her arrival in Denmark on 4 October 2012, having left her husband in Uganda, the author learned that both A. and her mother had been killed by her first husband, M.I.A., during a visit by A. to

his family in Kismaayo.[1] She had called her husband's mobile telephone and a friend had answered and informed her of what had happened. The author believes that, as her first husband did not agree to the divorce, he views their separation and her remarriage as contrary to the sharia and therefore wishes to punish her.

2.5 On 29 November 2013, the Danish Immigration Service denied the author's request for asylum. On 6 February 2014, the Danish Refugee Appeals Board upheld the decision, mainly on the grounds that it did not find the author's statements and claims to be credible.

2.6 In spite of consistent information about the severe violent abuse suffered by the author at the hands of her first husband and during the attack in 2010, and of the clear request of counsel to postpone the hearing to allow a medical examination to determine the veracity of the author's claims, no medical examination was initiated by the Immigration Service or the Refugee Appeals Board prior to the assessment of credibility. The author provided a report by the Danish medical group of Amnesty International, in which the group concluded that the author had been subjected to numerous acts of violence and that the objective findings were consistent with the author's statements. The report indicates that the author suffers from extensive scarring and from diagnosed post-traumatic stress disorder.[2] The Appeals Board refused the request to hear a witness on the author's behalf, a relative who could attest to her background. The author states that she has exhausted domestic remedies.

Complaint

3.1 The author claims that her deportation back to Somalia would constitute a violation of her rights under articles 1, 2, 3, 5 and 16 of the Convention and of general recommendation No. 19 (1992) on violence against women, given that the State party has an obligation not to deport persons who are at risk of gender-based violence. She also claims that this should be considered in conjunction with articles 3, 6 and 7 of the International Covenant on Civil and Political Rights.

3.2 The author claims that in Somalia she was subjected to serious violence by M.I.A.; that her second husband was killed and she was injured in 2010 during a violent attack by Al-Shabaab, of which M.I.A. is a member; and that her third husband and her mother were killed by M.I.A. No attempt has been made by the State party's authorities to investigate these claims, for example by requesting a medical examination by a specialist to assess the nature and origin of the injuries that she had sustained.

3.3 The author claims that she is afraid to go back to Somalia, given that her first husband carried out all of the above-mentioned attacks and is still looking for her. She further notes the instability in her home country. To return the author to Somalia would violate the State party's obligations under the Convention.

State party's observations on admissibility and the merits

4.1 The State party recalls the asylum procedure in the author's case and provides an excerpt of the Refugee Appeals Board decision.

4.2 The State party further provides a comprehensive description of the organization, composition, duties, prerogatives and jurisdiction of the Refugee Appeals Board and the procedural guarantees provided to asylum seekers, including

[1] No further information is provided.

[2] The report does not discount the possibility that some of the post-traumatic stress disorder symptoms could be attributable in part to stress related to her asylum proceedings.

legal representation, the presence of an interpreter and the possibility for an asylum seeker to make a statement on appeal. It also notes that the Appeals Board has a comprehensive collection of general background material on the situation in the countries from which the State party receives asylum seekers, updated and supplemented on a continual basis from various recognized sources, which it takes into consideration when assessing cases.

4.3 Regarding the admissibility of the communication, the State party notes that the author invokes the Convention in an extraterritorial manner, given that she refers only to the risk she faces if returned to Somalia. The State party refers to the Committee's jurisprudence in *M.N.N. v. Denmark*,[3] that a State party may be in violation of the Convention if it sends a person back to another State in circumstances in which it was foreseeable that serious gender-based violence would occur. The State party therefore concludes that the Convention has extraterritorial effect when the woman to be returned would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, that is, the necessary and foreseeable consequence of deportation is that her rights under the Convention would be violated in another jurisdiction.

4.4 The State party submits that it has not been substantiated that the author would be exposed to a real, personal and foreseeable risk of being subjected to serious forms of gender-based violence if returned to Somalia. It therefore asserts that the communication should be found inadmissible as manifestly ill founded, for failure to establish a prima facie case, under article 4 (2) (c) of the Optional Protocol.

4.5 Given that the author claimed violations of articles 3, 6 and 7 of the International Covenant on Civil and Political Rights, which falls outside the scope of the Convention, the State party also submits that those parts of the communication should be held to be inadmissible under article 4 (2) (b) of the Optional Protocol and pursuant to rule 67 of the Committee's rules of procedure.

4.6 Should the communication be found to be admissible and the Committee decide to proceed with its a consideration of the merits, the State party observes that the author has not sufficiently established that she would be exposed to a real, personal and foreseeable risk of being subjected to serious forms of gender-based violence if returned to Somalia. The author has failed to give a detailed account of how it would be contrary to articles 1, 2, 3, 5 and 16 of the Convention and general recommendation No. 19 to return the author to Somalia. The author has merely stated that she risks being subjected to gender-based violence upon return to Somalia. Furthermore, the State party submits that the author has failed to provide any new and specific information on her situation beyond that supplied to the Refugee Appeals Board, which formed the basis for its decision of 6 February 2014.

4.7 In reference to the decision of the Refugee Appeals Board of 6 February 2014, the State party notes that the Appeals Board could not accept as fact the author's statement that her first spouse approached her in 2010, 10 years after their divorce, and killed her second spouse, and that her first spouse continues to pursue her to this day, with the support of Al-Shabaab. The Appeals Board stated that that appeared unlikely and seemed fabricated for the occasion. The State party notes that the author has failed to give a reasonable explanation as to why she was able to stay in Kismaayo, her home town, for the first 10 years of her marriage to her second spouse and subsequently for two years after his murder, without being contacted by members of Al-Shabaab, if her first spouse wanted revenge.

[3] See communication No. 33/2011, *M.N.N. v. Denmark*, decision of inadmissibility adopted on 15 July 2013.

4.8 The State party further observes that it was only at the oral interview before the Appeals Board on 6 February 2014, after her asylum application had been refused by the Danish Immigration Service, that the author stated that it might have been her first spouse who had sent the men to kill her second spouse and injure her in 2010. During the initial asylum proceedings, however, including when her application was registered by the police on 10 October 2012 and when she was interviewed by the Immigration Service on 19 April 2013 and 7 November 2013, she had consistently stated that, according to her assumption, it was members of Al-Shabaab who had killed her spouse and injured her in 2010.

4.9 The State party also observes that the author has made inconsistent statements on crucial elements of her grounds for asylum. In relation to her first marriage and subsequent divorce, the author stated, during her interview for the asylum registration report on 10 October 2012, that she was divorced from her first spouse after about one year of marriage. When interviewed by the Immigration Service on 19 April 2013, the author stated that she had fled to her mother's home in Kismaayo after four months of cohabitation with her first spouse and that the court had granted her a divorce after two years of marriage, which had been accepted by her first spouse's father. When interviewed by the Danish Immigration Service on 7 November 2013, the author stated that her marriage to her first spouse had taken place in 2000 and had lasted four months before the author had moved back to Kismaayo. She claimed that they had divorced that same year at the initiative of her first spouse's father. At the same interview, the author stated that her first spouse had killed her third spouse and her mother because, in his opinion, he and the author were not divorced.

4.10 Regarding the way in which she had received the news about the killing of her third spouse and her mother, when interviewed by the Danish Immigration Service on 19 April 2013, the author had stated that she had called the mobile telephone of her third spouse in Uganda, which had been answered by one of his friends. The friend had told the author that her spouse, her mother and a third family member had been killed by her first husband. When interviewed by the Danish Immigration Service on 7 November 2013, the author had stated that the friend had said that he had received that information from neighbours in Kismaayo, where he was originally from. At the hearing before the Refugee Appeals Board on 6 February 2014, the author had stated that, in Denmark, she had been contacted by a man on the mobile telephone that she had been given at the accommodation centre in Denmark and that that man had been given her number by her third spouse in Uganda. The author was thus informed that her third spouse and her mother had been killed. The author had also stated that a former neighbour had given her telephone number to a woman, who had contacted the author telling her that people were looking for her every evening.

4.11 In relation to the author's statement that her third spouse and her mother were killed in 2012 by the author's first spouse, who was pursuing the author because he did not consider them to be divorced, the State party observes that this appears unlikely. It refers to the fact that the author had consistently stated throughout the asylum proceedings that her first spouse had not contacted her at her house in Kismaayo after she had left their marital home and that she had not seen him since they had divorced.

4.12 In conclusion, the State party agrees with the evaluation of the Refugee Appeals Board that the events forming the basis of the grounds for her asylum application, as presented by the author in her statement, appear unlikely to have occurred and fabricated for the occasion. It further states that it cannot consider a fact the statement that the author has an ongoing conflict with her first spouse or with Al-Shabaab, and it therefore cannot be considered a fact that, for those reasons,

the author would risk abuse if she were to return to Somalia, thus justifying the granting of asylum.

4.13 Regarding the author's claims that the State party should have investigated her claims of torture, the State party explains the grounds upon which it finds it necessary to obtain further details on torture before being in a position to determine the outcome of the case. If the Refugee Appeals Board considers it proved or possible that the asylum seeker has previously been subjected to torture but finds, upon a specific assessment of the asylum seeker's situation, that there is no real risk of torture upon return at the current time, the Appeals Board does not normally order an examination. The Appeals Board does not normally order an examination for signs of torture in cases in which the asylum seeker has lacked credibility throughout the proceedings, and the Appeals Board therefore has to reject the asylum seeker's statement about torture in its entirety. Reference is made in this regard to jurisprudence of the Committee against Torture in which the complainant's statements about torture and medical information provided were set aside owing to the complainant's lack of credibility.[4] The crucial factor is the situation in the country of origin at the time of the potential return of the asylum seeker to that country.

4.14 In its decision of 6 February 2014, the Refugee Appeals Board said that, regardless of whether it is considered to be a fact that the author was subjected to violence by her first spouse more than 13 years ago and in an assault in 2010, in which her second spouse was killed, such incidents could not independently justify the granting of residence under section 7 of the Aliens Act. Accordingly, the Appeals Board found that, even though the former violent abuse and the assault in 2010 were considered to be facts, if the author were to return to Somalia, she would not be at risk of being subjected to the kind of abuse that would give grounds for asylum and therefore found no reason to initiate an examination of the author for signs of torture.

4.15 The State party further observes that no connection has been proved to exist between the previous abuse and the statement of the author that she would allegedly risk abuse from her first spouse or from Al-Shabaab should she return to Somalia. Against this background, an examination for signs of torture could only confirm abuse that the author had allegedly suffered during her first marriage around 2000 and during the attack in 2010, but would not contribute any additional information relating to the author's submission regarding her ongoing conflict with her first spouse or with Al-Shabaab. The State party agrees with the assessment made by the Refugee Appeals Board finding that no examination for signs of torture should have been initiated.

4.16 Regarding the report by the Danish medical group of Amnesty International presented by the author, the State party observes that, in the conclusion of the report, the assessment made by the Refugee Appeals Board that an examination for signs of torture would not lead to a different evaluation of the matter is confirmed. While the State party notes that the majority of objective findings were compatible with the author's statements, in accordance with the findings of the Appeals Board, it would not lead to a different assessment were the author's statements on the abuse that she suffered in 2000 and in 2010 to be considered to be facts. The State party further notes that the information in the report does not substantiate the author's statement on the reason for or the alleged perpetrators of the violent incident in

[4] See Committee against Torture, communication No. 209/2002, *Otman v. Denmark*, decision adopted on 12 November 2003, and communication No. 466/2011, *Alp v. Denmark*, decision adopted on 14 May 2014; see, also, Committee against Torture, general comment No. 1 (1997) on the implementation of article 3, para. 8.

2010. As mentioned above, the statement of the author on this point was not accepted by the Appeals Board.

4.17 In relation to the author's claims regarding her request to call a witness, the State party submits that the author has not explained how the decision not to call one of her relatives as a witness at the Refugee Appeals Board hearing on 6 February 2014 was contrary to the provisions of the Convention. It appears from the author's statement that she wished to call a witness in relation to her background and place of residence. The State party recalls that, under section 54 (1) of the Aliens Act, the Appeals Board decides on the examination of asylum seekers and witnesses and on the provision of their evidence. According to the case law of the Appeals Board, the cases in which asylum seekers are allowed to call witnesses are those in which the witness will attest to matters linked directly to the grounds adduced for asylum. Accordingly, it is not generally relevant to allow witnesses in cases in which the witness would be called solely to substantiate the asylum seeker's general credibility if they do not otherwise have any link to the grounds for asylum. The State party observes in this respect that information on the author's family background and place of residence is not linked directly to the author's grounds for asylum. The information that the witness could provide would not therefore lead to a different assessment of the author's statement about conflicts with her former spouse.

4.18 The State party refers to the decision of 6 February 2014 of the Refugee Appeals Board, in which it was held that generally poor and unsafe conditions in Kismaayo could not lead to the conclusion that the situation there is, independently, of such a nature that the author risks persecution, thus justifying asylum. The State party refers to the report of the Office of the United Nations High Commissioner for Refugees, cited by the author and also forming part of the background information considered by the Appeals Board. The State party refers to other background data, which it has taken into account along with that report and which supports the conclusion of the Appeals Board.

4.19 The State party asserts that, upon her return to Somalia, the author would not lack a support network as, by her own account, she has several relatives there, including her children, her father's family and her mother's male cousins in southern Somalia, and she belongs to the main clan of Darod and the subclan of Marehan, which are two large clans in her country of origin.

4.20 The State party submits that the Refugee Appeals Board has therefore considered all relevant information and nothing further has been brought to light by the author to substantiate the claim that she would risk persecution or abuse justifying asylum upon her return to Somalia.

4.21 The State party refers to jurisprudence of the European Court of Human Rights, which establishes that "the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since they have the opportunity to see, hear and assess the demeanour of the individual concerned".[5] Regarding procedural safeguards, the same court observed that the applicant in *M.E. v. Denmark* had been "represented by a lawyer and he was given the opportunity to submit written observations and documents. His arguments were duly considered and the authorities' assessment in this regard must be considered adequate and sufficiently supported by domestic materials as well as by materials originating

[5] See European Court of Human Rights, *R.C. v. Sweden*, application No. 41827/07, judgment of 9 March 2010.

from other reliable and objective sources".[6] The State party asserts that the same guarantees were provided to the author in the present case.

4.22 The State party further submits that the Refugee Appeals Board, which is a collegial body of a quasi-judicial nature, made a thorough assessment of the author's credibility, the background information available and the author's specific circumstances and found that the author had failed to demonstrate the probability that she would risk persecution or abuse justifying asylum if she were returned to Somalia. The State party agrees with this finding.

4.23 The State party concludes that the author merely disagrees with the credibility finding against her, but has failed to identify any irregularity in the decision-making process or any risk factors that the Refugee Appeals Board failed to take into account. The author is therefore attempting to use the Committee as an appellate body to have the factual elements of her case reassessed. In these circumstances, the State party asserts that the Committee must give considerable weight to the assessment of the Appeals Board, which is better placed to assess the factual circumstances of the case.

4.24 In conclusion, the State party refers to the author's submission that the Refugee Appeals Board failed to make specific reference to articles of the Convention in its decision of 6 February 2014. It submits that this does not mean that the Appeals Board failed to take the obligations under the Convention into account. It asserts that international obligations are always taken into account when such decisions are being made.

4.25 The State party therefore submits that there is no basis for calling into question, let alone setting aside, the assessment of the Refugee Appeals Board. It therefore submits that to return the author to Somalia would not constitute a breach of its obligations under the Convention or general recommendation No. 19.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 4 August 2015, the author's counsel submitted the author's comments on the State party's observations.

5.2 The author refers to her statement to the Refugee Appeals Board that her first husband was very violent during the four months that they lived together in Mogadishu. The author was not questioned further concerning that violence or the marks on her body. Such questioning would have revealed the need for a medical examination, which would have provided a better basis for the credibility assessment by the Danish Immigration Service and subsequently by the Appeals Board. She points out that the Appeals Board found no reason to adjourn the case to carry out an examination for signs of torture or other abuse.

5.3 The author further refers to her statement to the Refugee Appeals Board that her second husband was killed in Kismaayo in 2010 and that, at the time, the attackers had probably believed that she was also dead after she had been hit by a bullet and fallen to the ground.

5.4 Regarding the State party's account of the national law and procedure, the author states that "Refugee Appeals Board" is an imprecise English translation of "Flygtningenævnet" and that a more precise translation would be "Refugee Board". The decision of the Danish Immigration Service is purely administrative. No legal counsel or independent third party is mandated to assist the asylum seeker. The

[6] See European Court of Human Rights, *M.E. v. Denmark*, application No. 58363/10, judgment of 8 July 2014.

matter is automatically brought before the Refugee Appeals Board if the decision is negative. From the Appeals Board, which is a quasi-judicial body and lacks many of the attributes of a real court, there is no right to appeal to any ordinary Danish court.

5.5 The author also raises the point that that there are no minimum educational standards for the interpreters used by the Danish Immigration Service or the Refugee Appeals Board. Even when interpreters are made available, there is no requirement to give priority to hiring those with relevant educational qualifications. An interpreter is accepted by the national police after a screening, including a criminal record check. The State party has argued that it is difficult to find educated interpreters in some languages. The author submits that the audio recordings of interviews should be kept as a record of what was said in case mistakes are made and to allow counsel to represent the exact words of the asylum seeker, but this has not been done.

5.6 As to examination for signs of torture, the State party submits that the decision regarding whether to carry out such an assessment is typically not made until the Refugee Appeals Board hearing, as the Board's assessment of credibility depends on the asylum seeker's statement. The author submits that an examination should be undertaken as part of the basis upon which a credibility assessment is made.

5.7 Regarding the significance of background information, the author submits that she is a vulnerable woman who has lost two husbands owing to the actions of her first husband. Moreover, her story and wounds are compatible with background information on Somalia.

5.8 With regard to the State party's statement that the Convention has extraterritorial effect only where the author would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, she submits that this is exactly the risk that she faces.

5.9 As to the merits of the communication, the author refers to the State party's account of her first marriage and the period thereafter. She claims that her first spouse was very violent and was away for long periods and did not tell her where he was going or what he was doing. He was not working, to her knowledge, although he had a lot of money. She claims that she was in a forced marriage with her first spouse, which had been arranged by their families. She supposes that the marriage was foreseen as a way to calm him down. . Every time he talked on the telephone he went outside. These facts generally led the author to the conclusion that he was a member of Al-Shabaab, which she later confirmed. During her years in Kismaayo, her home town, she was always on alert. She thinks that she was not sought out before the attack in 2010 because her first husband had been abroad training with Al-Shabaab. She is sure that the purpose of the attack in 2010 was to kill her and that the attackers, seeing her lying on the floor after having been shot, must have thought that she was dead. As already explained by the author, she had only gradually realized that her first husband was behind the attack. Blame should not be attributed to a victim for not knowing precisely who her attackers were.

5.10 With regard to the length of the marriage and the timing of the divorce from her first spouse, the State party has noted that it finds some inconsistency and elaboration on the part of the author. On the contrary, taking into consideration her illiteracy and physical condition, there are no profound differences between the statements made by the author. All her explanations regarding her first marriage coincide in the fact that she was together with her first spouse for only four months after the marriage took place. She was also consistent in explaining that after those four months she fled to her mother's house in Kismaayo. The only small discrepancy pertains to the exact timing of the divorce, but she cannot be blamed for this inconsistency because the divorce was a minor event compared with her escape

from her violent husband. Even today she does not recall exactly when the divorce took place, but still believes it to have been between one and two years after the marriage. Moreover, some additional elements, such as the fact that the divorce took place at the initiative of her first spouse's father, are not mentioned in every one of the author's statements, but she cannot be blamed for not mentioning every detail in every account.

5.11 Likewise, the State party lists her different accounts of the way in which she received the news that her third spouse and her mother had been killed. She again submits that there is no real contradiction between those statements, which all mention details of the same fact, namely that the friend of her third spouse in Uganda received word of the killings and conveyed the information to the author by telephone while she was in Denmark.

5.12 The author submits that her statement that her first spouse was of the opinion that the divorce was not valid should not be disputed, asking why she would have made the statement if it was not a fact.

5.13 The author submits that the State party is deliberately seeking to find inconsistencies and elaboration in her statements, instead of taking into account her vulnerabilities as an illiterate person who has been subjected to severe psychological and physical abuse, as documented in the report by the Danish medical group of Amnesty International.

5.14 The author firmly contests the State party's observations on the report by Amnesty International. In its decision of 6 February 2014, the Refugee Appeals Board tried to address the alleged torture — which had not at that stage been considered — by using the wording "regardless of whether it is considered to be a fact that the author was subjected to violence". This unclear wording indicates that the State party had not at that time decided whether it considered it a fact that the author had been subjected to torture. The information in the report by Amnesty International subsequently proved that she had been. The State party should have examined the author for evidence of torture in order to establish a better foundation for the assessment of credibility.

5.15 The author disagrees with the conclusion by the State party that she would be at no real risk of torture if she were to return to Somalia. In the author's opinion, her first spouse could reappear at any time. He is violent and unpredictable and there is a high probability that he is a member of Al-Shabaab. It should also be noted that the author is easily recognizable owing to her gold front tooth. Furthermore, it is well known that Al-Shabaab has a strong hold on southern Somalia and also operates in other parts of Somalia and the surrounding countries, which provides a probable explanation for the extended absences of her first spouse. The author notes that she gave a detailed explanation of the injuries that she had suffered at his hands.

5.16 With regard to the refusal to call the witness on the author's behalf, again the State party neglected to use the opportunity to establish a better basis upon which to make a credibility assessment by not hearing a witness who could have provided contextual information on the author's family background and situation. Even though the witness was listed in the brief and was present outside the Refugee Appeals Board meeting room, the request for the witness to be heard was not granted. This was not mentioned in the decision of the Appeals Board.

5.17 On the general security situation in Somalia, the author refers to the report of the Secretary-General on Somalia of September 2014 (S/2014/699),[7] which states

[7] See also S/2015/331.

that Al-Shabaab continues to exert pressure in southern and central Somalia and that Shabelle Hoose remains volatile.

5.18 The author therefore submits that she would indeed be exposed to a high risk of suffering and irreparable damage if returned to Somalia.

State party's additional observations

6.1 On 4 February 2016, the State party provided its additional observations in response to the author's comments.

6.2 In connection with the author's reference to the report of the Secretary-General on Somalia, the State party submits that the information contained therein has not prompted it to revise its position. It refers in this connection to the most recent background information on Somalia,[8] from which it appears that Kismaayo is controlled by Interim Jubba Administration forces.

6.3 The State party refers to the jurisprudence of the European Court of Human Rights in *R.H. v. Sweden*,[9] in which the Court concluded that "a single woman returning to Mogadishu without access to the protection of a male network would face a real risk of living in conditions constituting inhuman or degrading treatment". However, the State party distinguishes that case from the author's because the author has several family members in southern Somalia, including her teenage daughters, her father's family and her mother's male cousins. The author has further stated that she comes from the main clan of Darod and the subclan of Marehan, which are two large clans in her country of origin. Noting that the Darod is one of the four "noble" (majority) clans in Somalia,[10] which may retain the ability to provide protection to its members or those with whom it has links, the State party claims that the author, who had moved to Kismaayo when she was 13 years old, may be assumed to have links to members of her clan.

6.4 The State party asserts that, contrary to the author's position, in fact an overall assessment of the asylum seeker's social background is always taken into account in the adjudication by the Refugee Appeals Board of an application for asylum. The Appeals Board took into account the author's illiteracy and the abuse that she had previously suffered.

6.5 The State party further observes that, while inconsistent statements about crucial elements of the grounds adduced for asylum may weaken the credibility of the asylum seeker, in its assessment the asylum seeker's explanation of those inconsistencies is also taken into account.

6.6 With regard to not calling the witness, the State party reiterates that the proposed witness was an uncle who had lived in Denmark since 1991 and could therefore add nothing to the facts in direct relation to the asylum application.

6.7 Regarding the educational requirements for interpreters, the State party notes that no errors or omissions were pointed out in the translations in connection with the proceedings before either the Danish Immigration Service or the Refugee Appeals Board, nor has the author objected to the work of any interpreter. In fact, the State party notes that the author confirmed the interpreter's translation of the report of the screening interview with the Immigration Service on 19 April 2013. It

[8] Published by the Austrian Federal Office for Immigration and Asylum on 2 October 2015.

[9] See European Court of Human Rights, *R.H. v. Sweden*, application No. 4601/14, judgment of 10 September 2015.

[10] See Home Office of the United Kingdom of Great Britain and Northern Ireland, "Country information and guidance. South and central Somalia: Majority clans and minority groups", published in March 2015.

further notes that she stated that she had understood everything and made only one comment when asked and finally accepted the report. As to the report of the interview conducted by the Immigration Service on 7 November 2013, the author had no comments on it and accepted its contents, stating that she had understood everything.

6.8 The State party refers to the jurisprudence of the Human Rights Committee in *K. v. Denmark*,[11] in which the Committee held that, "as to the author's general statements regarding the lack of guarantees of proceedings before the Refugee Appeals Board, the Committee notes that the author had access to counsel and participated in the oral hearing with the assistance of an interpreter provided by the Refugee Appeals Board. Therefore, the Committee considers that the author has not justified how these proceedings would have amounted to a denial of justice in his case". The State party submits that the same due process guarantees were applied in the author's case.

6.9 The State party summarizes its position in referring to the jurisprudence of the Human Rights Committee,[12] in which the Committee stated that "important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of State parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists".

Issues and proceedings before the Committee

Consideration of admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol.

7.2 The Committee notes that the author claims to have exhausted domestic remedies and that the State party has not challenged the admissibility of the communication on this ground. The Committee observes that, according to the information available to it, decisions of the Refugee Appeals Board cannot be appealed before national courts. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication.

7.3 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.4 The Committee notes that the State party challenges the admissibility of the communication, in accordance with article 4 (2) (b) of the Optional Protocol, given that the author invokes articles of the International Covenant on Civil and Political Rights along with those of the Convention. The Committee accordingly considers that all claims under the Covenant are inadmissible as incompatible with the Convention under article 4 (2) (b).

7.5 The Committee further notes that the State party challenges the admissibility of the communication, in accordance with article 4 (2) (c) of the Optional Protocol, on the grounds that the author's claims are manifestly ill founded and not sufficiently substantiated. The Committee notes the author's claims that her deportation to Somalia would constitute a violation of articles 1, 2, 3, 5 and 16 of the Convention, read in conjunction with the Committee's general recommendation

[11] See communication No. 2393/2014, *K. v. Denmark*, views adopted on 16 July 2015, para. 7.6.

[12] See, for example, communication No. 2272/2013, *P.T. v. Denmark*, para. 7.3; and *K. v. Denmark*, para. 7.5.

No. 19, grounded in the alleged risk that the author would face serious gender-based violence if she were returned to Somalia, given that she was previously a victim of recurrent domestic violence, of which she bears the physical scars, as corroborated by the report by Amnesty International; that she would face the same treatment in the future if returned to Somalia as each attack that she had suffered was either directly or indirectly initiated by the same person, her ex-husband, who is now a member of Al-Shabaab; and that he used other members of Al-Shabaab to attack the author because he does not accept that he and the author are divorced and considers her leaving him to be contrary to the provisions of the sharia. While noting the State party's concerns regarding the lack of substantiation of claims made by the author regarding the involvement of her first husband in violent incidents affecting the author after their divorce, the Committee recalls that States parties should not deem that a woman asylum seeker lacks credibility merely because she cannot present documentation to support her asylum claim. Instead, they should take into account that women in many countries do not possess documentation in their respective countries of origin and seek to establish credibility by other means. The Committee considers that, even if many of the author's statements were contradictory, the threshold for admissibility should not be set too high in view of the situation in the author's country, which makes it difficult, if not impossible, for a woman to obtain documentation attesting to gender-based violence from the police, courts or medical facilities. The Committee concludes that the author's claim is sufficiently substantiated for the purposes of admissibility and the Committee is not precluded on those grounds from proceeding with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the author and the State party, as provided for under article 7 (1) of the Optional Protocol.

8.2 The Committee observes that the author claims that she was forced to escape a volatile and violent marriage to her first husband; that she was the victim of an attack in the home that she shared with her second husband, during which she was injured and her second husband was killed by members of Al-Shabaab; and that, after escaping to Uganda and marrying again, she learned, upon her arrival in Denmark, that her third spouse had also been killed, along with her mother and another family member, by Al-Shabaab, of which her first husband is believed to be a member, while her third spouse was visiting the author's home town. The Committee notes that the author believes her first husband to be behind all of the attacks because he believes that she has acted in contravention of the sharia by leaving the marriage and remarrying. She claims that the intervals between the attacks are attributable to his travelling abroad to be trained and to fight as an Al-Shabaab militant. She states that the realization that all the attacks were carried out by, or at the direction of, her first spouse was not immediately apparent and occurred to her only over time. The author submits that her asylum application was denied on the basis that her claim, that she remained at risk from her first spouse, was found to be unlikely and fabricated for the occasion. She asserts that any assessment of her credibility should have taken into consideration the significant scarring on her body consistent with all her claims of violence, thus supporting her account. Furthermore, the witness who the author was not allowed to call could have provided a further basis upon which to assess the credibility of her statement.

8.3 The Committee notes the State party's contention that the author has failed to substantiate that there are substantial grounds for believing that she is in danger of being subjected to serious gender-based violence if returned to Somalia; that her claims have been reviewed by the Danish immigration authorities, which found that

the author would not risk persecution as set out in section 7 (1) of the Aliens Act or be in need of protection status as set out in section 7 (2) of the Act if she were to return to Somalia; that the author did not provide a credible account of the above events; and that she did not substantiate the claim that her first husband was behind the murders of her second and third husbands, owing to the time that had elapsed between the attacks and the fact that this conclusion appeared to have been reached by the author only after her asylum application had been rejected. The State party did not believe that a medical examination could have changed the assessment, and the decision not to carry one out was taken in the light of all the evidence before it, not least of which was that, even if the accounts of violence were to be taken as fact, the cause of the violence and risk of future harm would still not be borne out. Furthermore, the State party claims that the author has male protection in Somalia and that her home town is not controlled by Al-Shabaab but by Interim Jubba Administration forces.

8.4 The Committee notes that, in substance, the author's claims are aimed at challenging the manner in which the State party's authorities assessed the circumstances of her case, applied the provisions of national law and reached conclusions. The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case,[13] unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.[14] The Committee notes that nothing on file demonstrates that any such deficiencies characterized the examination by the authorities of the author's claims regarding her fears as to the risks that she would face if she were to return to Somalia. The Committee notes that, despite generalized statements made by the author's counsel regarding perceived inefficiencies in the asylum procedures of the State party, they are not alleged to have amounted to, or provoked, discrimination or rendered decisions made by the authorities arbitrary in the author's case. Moreover, it is for each sovereign State party to determine the nature, structure and procedures of its own refugee determination system, as long as the basic procedural guarantees set down in international law are respected.

8.5 While the author requested permission to present a witness, which was not granted, the background information on the author's family history that this relative would have been able to provide was not at issue, since he had already left Somalia when the civil war broke out and was therefore not privy to any of the events upon which the asylum claim was based. The authorities accordingly addressed all the arguments presented by the author during the asylum proceedings and assessed her allegations regarding violence suffered at the hands of both her first husband and members of Al-Shabaab, all evidence presented by her at the national level, including the medical assessment by Amnesty International, and her claims that she faced persecution and was at risk of being killed upon her return. In conclusion, taking into account the information provided by the parties, the Committee is of the view that the author has failed to identify any procedural irregularity in the decision-making process of the State party.

8.6 In the light of the foregoing, while not underestimating the concerns that may legitimately be expressed with regard to the general human rights situation in Somalia and, in particular, concerning women's rights, the Committee considers that nothing on file permits it to conclude that the State party's authorities did not give

[13] See, for example, communication No. 34/2011, *R.P.B. v. Philippines*, views adopted on 21 February 2014, para. 7.5.

[14] See, for example, communication No. 62/2013, *N.Q. v. United Kingdom of Great Britain and Northern Ireland*, views adopted on 25 February 2016.

sufficient consideration to the author's asylum claims. The Committee therefore considers that the authorities of the State party examined the author's asylum claim in a manner respecting its obligations under the Convention.

9. Acting under article 7 (3) of the Optional Protocol, the Committee concludes that the author's asylum proceedings and the decision to proceed with her removal to Somalia do not constitute a breach of article 1, 2, 3, 5 or 16 of the Convention.